

REMARKS

This is intended as a full and complete response to the Office Action dated December 27, 2007, having a shortened statutory period for response set to expire on March 27, 2008. Applicants have attached a Petition for a Three Month Extension of Time, in accordance with 37 C.F.R. §1.136, extending the statutory period until June 27, 2008. Applicants respectfully request entry and consideration of the above noted amendments and the following remarks in response to the Office Action.

OBJECTIONS:

Claims 4 stand objected to. Applicants have cancelled claim 4, thereby obviating the rejection.

CLAIM REJECTIONS:

Claims 10, 27 and 37 stand rejected under 35 U.S.C. §112, first paragraph. Claims 10, 27 and 37 have been cancelled herein, thereby obviating the rejection.

Claims 10-12, 15-17, 22, 31-32, 34 and 36-38 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,104,916 (*Trinh*). Applicants have cancelled claims 10-12, 15-17, 22, 31-32, 34 and 36-38, thereby obviating the rejection.

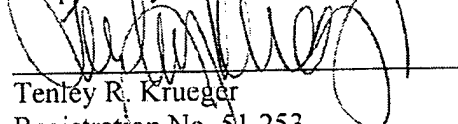
Claims 1, 3-4, 7, 9, 23-24, 30 and 33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,767,939 (*Butler*). *Butler* teaches polymer modified asphalts including from 2 to 5 wt.% of a crosslinking composition. The crosslinking composition includes mercaptobenzothiazole. The Office Action states that the “difference between the instant claims and the examples of the patent is the use of MBT as a crosslinking agent...while the instant claims require one of dithiocarbamates, alkyl polysulfides and ester polysulfides”. The Office Action further goes on to state that “It would have been obvious to one of ordinary skill in the art to at least partially substitute a dithiocarbamate for the MBT of the reference because they are known to function equivalently.” It is not “appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known”. See, MPEP 2144.03. Applicants submit that the replacement of MBT with the claimed crosslinking

agents to result in an asphalt preparation process having reduced sulfide emissions is not capable of instant and unquestionable demonstration as being well-known. The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification. *In re Gordon*, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984.) The Office Action has provided no support for such teaching. Accordingly, Applicants respectfully request withdrawal of the rejection.

Claims 1, 3-4, 7, 9, 23-24, 30 and 33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Trinh*. The Office Action sets forth the same type of rejection for *Trinh* as for *Butler*. A thorough discussion of such rejection is detailed above and repeating such argument is not deemed necessary for full response to this Office Action. Based on the previously presented arguments, Applicants respectfully request withdrawal of the rejection.

In conclusion, Applicants submit that the references cited in the Office Action, neither alone nor in combination, teach, show, or suggest the claimed features. Having addressed all issues set out in the Office Action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request the same.

Respectfully submitted,



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